



ANNO VICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1980

No. 115 of 1980

An Act to amend the Shop Trading Hours Act, 1977, and to make a consequential amendment to the Second-hand Dealers Act, 1919-1971.

[Assented to 18 December 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles

1. (1) This Act may be cited as the "Shop Trading Hours Act Amendment Act, 1980".

(2) The Shop Trading Hours Act, 1977, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Shop Trading Hours Act, 1977-1980".

**Commence-
ment.**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Amendment of
s. 4—
Interpretation.**

3. Section 4 of the principal Act is amended—

(a) by inserting the following definition before the definition of "the Central Shopping District":

"building" includes part of a building;;

(b) by striking out the definition of "closing time" and substituting the following definition:

"closing time" in relation to a shop, means the time at which the shop is required to be closed under this Act;;

(c) by striking out the definition of "declared shop";

(d) by striking out paragraph (a) of the definition of "exempt shop" and substituting the following paragraph:

(a) a shop (not being a hairdresser's shop)—

(i) the floor area of which does not exceed two hundred square metres;

- (ii) which does not adjoin or is not adjacent to a building—
 - (A) that is used as a storeroom for the purposes of the shop;
 - and
 - (B) the floor area of which exceeds one-half of the floor area of the shop;
 - and
 - (iii) in which not more than three persons are physically present at any one time for the purpose of carrying on, or assisting in carrying on, the business of the shop; ;
- (e) by striking out from paragraph (b) of the definition of “exempt shop” the passage “a shop the business of which is mainly or predominantly” and substituting the passage “subject to subsection (2), a shop the business of which is”;
- (f) by striking out paragraph (d) of the definition of “exempt shop” and substituting the following paragraph:
 - (d) subject to subsection (2), a shop—
 - (i) the business of which is the sale of foodstuffs;
 - (ii) which has a floor area—
 - (A) that does not exceed two hundred square metres;
 - or
 - (B) that does not exceed four hundred square metres and in which not more than three persons are physically present at any one time for the purpose of carrying on, or assisting in carrying on the business of the shop;
 - and
 - (iii) which does not adjoin or is not adjacent to a building—
 - (A) that is used as a storeroom for the purposes of the shop;
 - and
 - (B) the floor area of which exceeds one half of the floor area of the shop; ;
- (g) by striking out paragraph (e) of the definition of “exempt shop” and substituting the following paragraph:
 - (e) a shop in relation to which a certificate of exemption, issued by the Minister, is in force;;
- (h) by striking out from paragraph (f) of the definition of “exempt shop” the passage “a shop which is situated” and substituting the passage “subject to subsection (2), a shop which is situated”;
- (i) by striking out from paragraph (f) of the definition of “exempt shop” the passage “mainly or predominantly”;
- (j) by striking out from the definition of “exempt shop” the passage “but does not include any shop the business of which is mainly

or predominantly the retail sale of” and substituting the passage “but does not include any shop the business of which is solely or predominantly the retail sale of”;

- (k) by striking out paragraph (i) of the definition of “exempt shop” and substituting the following paragraph:

(i) motor spirit or lubricants: ;

- (l) by inserting after the definition of “exempt shop” the following definitions:

“floor area” in relation to a shop means the sum of—

(a) the area in which goods are displayed for inspection by the public;

(b) the area to which the public has access for the purpose of inspecting and purchasing goods;

and

(c) the floor area of any other shop (other than the floor area attributed to that shop by reason of this paragraph) that adjoins or is adjacent to the shop where—

(i) both shops sell substantially the same classes of goods, or the classes of goods sold by the shops are such as are usually available from a single shop;

and

(ii) the businesses of both shops are owned by the same person or by different persons who conduct the businesses of the shops as one business or substantially as one business:

“hardware and building materials” has the meaning prescribed by the regulations: ;

- (m) by striking out from paragraph (c) of the definition of “the metropolitan area” the passage “and Kangarilla wards of the district council of Meadows” and substituting the passage “, O’Halloran Hill and Flagstaff Hill wards of the district council of Meadows”;

and

- (n) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) A shop is not an exempt shop by virtue of paragraphs (b), (d) or (f) of the definition of “exempt shop” unless the aggregate price of goods—

(a) comprised in a class or classes of goods referred to in any one or more of those paragraphs;

and

(b) sold at the shop during any period comprising seven consecutive trading days,

is not less than eighty per cent of the aggregate price of all goods sold at the shop during that period.

(3) For the purposes of subsection (2) a "trading day" is a day on which the public has access to the shop for the purpose of purchasing goods.

4. Section 5 of the principal Act is repealed and the following section is substituted:

Repeal of
s. 5 and
substitution
of new
section.

5. (1) The Minister may issue a certificate of exemption to a shop-keeper in relation to a shop specified in the certificate.

Certificate of
exemption.

(2) A certificate issued under this section shall be subject to such restrictions and conditions as are specified in the certificate.

(3) Where, in the opinion of the Minister—

(a) there has been a breach of a restriction or condition to which a certificate is subject;

or

(b) it is desirable for any other reason to revoke the certificate, he may, by notice in writing served personally or by post on the holder of the certificate, revoke the certificate.

5. Section 6 of the principal Act is amended by striking out from paragraph (a) of subsection (1) the passage "mainly or predominantly" and substituting the passage "solely or predominantly".

Amendment of
s. 6—
Application of
Act.

6. Section 11 of the principal Act is amended by striking out from subsection (3) the passage "section 11 of this Act" and substituting the passage "section 12".

Amendment of
s. 11—
Proclaimed
Shopping
District.

7. Section 13 of the principal Act is amended—

Amendment of
s. 13—
Closing time
for shops.

(a) by striking out subsections (1), (2) and (3) and substituting the following subsections:

(1) Subject to this section, the closing time for a shop situated within the Central Shopping District, or any other shopping district, or part of a shopping district, to which this subsection applies by virtue of a proclamation under subsection (6), shall be—

(a) 6 p.m. on every weekday other than a Friday;

(b) 9 p.m. on a Friday;

and

(c) 12.30 p.m. on a Saturday.

(2) Subject to this section, the closing time for a shop situated in a shopping district, or part of a shopping district, other than a shopping district, or part of a shopping district, to which subsection (1) applies shall be—

(a) 6 p.m. on every weekday other than a Thursday;

(b) 9 p.m. on a Thursday;

and

(c) 12.30 p.m. on a Saturday.

(3) Notwithstanding any other provision of this section the closing time of a shop the business of which is solely or predominantly the sale of motor vehicles or boats shall be—

(a) 6 p.m. on a Monday, Tuesday and Wednesday;

(b) 9 p.m. on a Thursday and Friday;

and

(c) 1.00 p.m. on a Saturday.;

(b) by striking out from subsection (4) the passage “mainly or predominantly” and substituting the passage “solely or predominantly”;

(c) by striking out subsection (5);

(d) by striking out subsection (6) and substituting the following subsection:

(6) Subject to subsection (7), the Governor may, by proclamation, order that the closing times specified in subsection (1) apply, as from a time specified in the proclamation, in any shopping district or part of a shopping district specified in the proclamation and those closing times shall apply accordingly—

(a) until the date (if any) specified in the proclamation as the date at which the proclamation is to cease to have effect;

or

(b) until the publication in the *Gazette* of a proclamation revoking that proclamation,

whichever occurs first. ;

and

(e) by striking out subsection (8) and substituting the following subsections:

(8) In subsection (7)—

“interested persons” means—

(a) persons resident in the relevant shopping district, or part of a shopping district;

and

(b) shopkeepers and shop assistants who work in shops within that shopping district or part of a shopping district.

(9) The Governor may, by proclamation, authorize the opening of shops during hours, specified in the proclamation, when it would otherwise be unlawful to open those shops.

(10) A proclamation under subsection (9)—

(a) may relate to shops generally or to a specified shop or to specified classes of shops;

(b) may apply generally throughout the State or in specified shopping districts or in a specified part of a shopping district or in other parts of the State;

(c) shall not operate in respect of a period greater than one month;

and

(d) may be revoked by subsequent proclamation.

(11) Notwithstanding any other provision of this Act it is lawful for a shop to be open in accordance with a proclamation under subsection (9).

(12) The Governor may, by proclamation, require shops to be closed at times when it would otherwise be lawful to open those shops.

(13) A proclamation under subsection (12)—

(a) shall stipulate the times during which shops must be closed;

(b) may relate to shops generally or to a specified shop or to specified classes of shops;

(c) may apply generally throughout the State or in specified shopping districts or in a specified part of a shopping district or in other parts of the State;

and

(d) may be revoked by subsequent proclamation.

(14) Notwithstanding any other provision of this Act it is unlawful for a shop to be open in contravention of a proclamation under subsection (12).

8. The following section is inserted after section 13 of the principal Act:

Insertion of
new s. 13a.

13a. (1) A shop—

Permits for
certain
hardware
shops.

(a) that is not an exempt shop;

(b) the business of which is solely the sale of hardware and building materials;

and

(c) in relation to which a permit is in force under this section,

may—

(d) remain open on a Saturday until 4.00 p.m.;

and

(e) open from 10.00 a.m. to 4.00 p.m. on a Sunday or other public holiday except Good Friday, Easter Sunday, Anzac Day or Christmas Day.

(2) The Minister may grant a permit under this section to a shopkeeper in relation to a shop referred to in subsection (1).

(3) A permit granted under this section shall be subject to such restrictions and conditions as are prescribed.

(4) Where, in the opinion of the Minister—

(a) there has been a breach of a prescribed restriction or condition;

or

(b) it is desirable for any other reason to revoke the permit, he may, by notice in writing served personally or by post on the holder of the permit, revoke the permit.

Amendment of
s. 14—
Shops to be
closed at
closing time.

9. Section 14 of the principal Act is amended—

(a) by striking out from subsection (3) the passage “and each other public holiday” and substituting the passage “, each other public holiday and during such other period that the shop is required by this Act to be closed”;

(b) by inserting at the end of subsection (5) the passage “or during any other period that the shop is required by this Act to be closed”;

and

(c) by striking out subsections (2), (4), (6), (7) and (8) and substituting the following subsections:

(6) A person who fails to comply with subsections (1), (3) or (5) is guilty of an offence and is liable to a penalty not exceeding ten thousand dollars.

(7) Where, at a time when a shop is required by this Act to be closed, a person (other than the shopkeeper or an employee or agent of the shopkeeper) is in the shop for the purpose of—

(a) purchasing goods;

(b) inspecting goods;

or

(c) taking delivery of goods purchased,

the shopkeeper is guilty of an offence and liable to a penalty not exceeding ten thousand dollars.

(7a) In any proceedings in respect of an offence under subsection (7), an allegation in the complaint that a person was in a shop for the purpose of—

(a) purchasing goods;

(b) inspecting goods;

or

(c) taking delivery of goods purchased,

shall be deemed, to be proved in the absence of proof to the contrary.

(7b) It is a defence for a person charged with an offence under subsection (7) to prove that he did not know, and could not reasonably be expected to have known, that a person was in his shop for the purpose of—

(a) purchasing goods;

(b) inspecting goods;

or

(c) taking delivery of goods purchased.

(8) Except as otherwise provided in this Act, if the business of hairdressing or pawnbroking is carried on in a shop after the closing time on any day, or at any time on a Sunday or other public holiday, the shopkeeper shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars.

(8a) Where a court imposes a penalty for an offence against this section it may fix, by way of additional penalty, an amount determined or estimated by the court as being the amount by which the convicted defendant benefited from trading that was, by virtue of this Act, unlawful on the day on which the offence was committed.

10. The following section is inserted after section 14 of the principal Act:

Insertion of
new s. 14a.

14a. (1) Subject to this section, a person who publishes, or causes to be published, an advertisement that—

Advertising.

(a) a shop will be open during any period when the shop is required by this Act to be closed;

or

(b) goods will be offered for sale at a shop that is an exempt shop by virtue of paragraph (b) of the definition of “exempt shop”, at a time when those goods could not lawfully be sold if the business of the shop was solely or predominantly the sale of those goods,

is guilty of an offence and is liable to a penalty not exceeding ten thousand dollars.

(2) Subsection (1) does not apply to the proprietor or publisher of a newspaper or magazine or to the holder of a licence under the *Broadcasting and Television Act 1942* of the Commonwealth.

11. The following sections are inserted after section 15 of the principal Act:

Insertion of
new ss. 15a
and 15b.

15a. (1) Subject to this section, motor spirit and lubricants shall not be sold—

Sale of
motor spirit
from
foodstuffs
store.

(a) at the same shop as;

or

(b) at a shop that adjoins or is adjacent to,
a shop—

(c) that is an exempt shop;

and

(d) the predominant business, or one of the predominant businesses, of which is the sale of foodstuffs.

Penalty: Ten thousand dollars.

(2) This section does not apply to a shop—

(a) where foodstuffs sold by the shop, or by an adjoining or adjacent shop, are comprised principally of food for

consumption on the premises of the shop or food prepared on the premises of the shop for consumption off those premises;

(b) the floor area of which does not exceed two hundred square metres;

or

(c) that is situated outside the metropolitan area.

(3) For the purposes of this section a shop adjoins or is adjacent to another shop if—

(a) the shops adjoin or are adjacent to one another;

and

(b) the businesses of both shops are owned by the same person or by different persons who conduct the businesses of the shops as one business or substantially as one business.

Sale of
foodstuffs
from petrol
station.

15b. (1) Subject to this section, foodstuffs shall not be sold—

(a) at the same shop as;

or

(b) at a shop that adjoins or is adjacent to,

a shop—

(c) the predominant business, or one of the predominant businesses, of which is the sale of motor spirit or lubricants;

and

(d) in relation to which a licence granted under section 17 is in force.

Penalty: Ten thousand dollars.

(2) This section does not apply—

(a) where the foodstuffs sold are comprised principally of food for consumption on the premises of the shop or food prepared on the premises of the shop for consumption off those premises;

(b) where the floor area of the shop or part of the shop from which foodstuffs are sold does not exceed two hundred square metres;

or

(c) to a shop that is situated outside the metropolitan area.

(3) For the purposes of this section a shop adjoins or is adjacent to another shop if—

(a) the shops adjoin or are adjacent to one another;

and

(b) the businesses of both shops are owned by the same person or by different persons who conduct the businesses of the shops as one business or substantially as one business.

12. Section 16 of the principal Act is amended—

Amendment of
s. 16—
Prescribed
goods.

(a) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) motor spirit and lubricants.;

(b) by striking out from subsection (2) the passage “section 16 of this Act” and substituting the passage “section 17”;

(c) by striking out from subsection (2) the passage “mainly or predominantly” and substituting the passage “solely or predominantly”;

and

(d) by striking out subsection (3) and substituting the following subsection:

(3) A person who is guilty of a contravention of subsection (2) is liable to a penalty not exceeding ten thousand dollars.

13. Section 17 of the principal Act is amended by striking out from subsection (1) the passage “, and spare parts and accessories for motor vehicles”.

Amendment of
s. 17—
Licence to
sell motor
spirit and
lubricants.

14. Section 18 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

Amendment of
s. 18—
Proceedings.

(2) In any proceedings in respect of an offence against this Act, an allegation in the complaint that a specified shop is within a specified shopping district shall be deemed to be proved in the absence of proof to the contrary.

15. Section 19 of the principal Act is repealed and the following section is substituted:

Repeal of
s. 19 and
substitution
of new
section.

19. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1) the Governor may make regulations—

(a) prescribing the manner in which a shop or class of shops is to be closed and fastened against the admission of the public;

and

(b) prescribing penalties (not exceeding five hundred dollars) for a breach of, or non-compliance with, any regulation.

16. (1) The Second-hand Dealers Act, 1919-1971, is amended by striking out section 17 and substituting the following section:

Amendment of
the Second-
hand Dealers
Act, 1919-1971.

17. A licensee shall not buy or sell second-hand goods—

Hours of
business.

(a) if his premises are situated in a shopping district—at a time when he is required to keep his premises closed and

fastened against the admission of the public in pursuance of the Shop Trading Hours Act, 1977-1980;

or

(b) if his premises are not situated in a shopping district—at a time when shops situated in the same locality as his premises are not generally open for business.

Penalty: Five hundred dollars.

(2) The Second-hand Dealers Act, 1919-1971, as amended by this section, may be cited as the “Second-hand Dealers Act, 1919-1980”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor